

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

MARC S. CASON #180-571	:	
Plaintiff	:	CASE NO.: 20-00692 PX
v.	:	
CORIZON HEALTH SERVICES, et al.	:	
Defendants	:	

**DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT**

Defendants Asresahegn Getachew, M.D., Ayoku Oketunji, M.D.,¹ Yonas Sisay, M.D.,² Bolaji Onabajo, M.D.,³ and Hiruy Bishaw, M.D.⁴ (collectively the "Wexford Defendants"),⁵ by their counsel, Gina M. Smith, Douglas C. Meister, and Meyers, Rodbell & Rosenbaum, P.A., hereby submit this Motion to Dismiss or, in the alternative, Motion for Summary Judgment and in support thereof state as follows:⁶

1. On March 16, 2020, Plaintiff, *pro se*, filed a complaint in the U.S. District Court for Maryland for deliberate indifference to his medical needs under 42 U.S.C. § 1983. ECF 1. On April 3, 2020, Plaintiff filed an amended complaint naming the Wexford Defendants as defendants. ECF 5.
2. Plaintiff's claims arise out of the alleged failure of the Wexford Defendants to provide wheelchair accessibility, clean dormitory, bathrooms and showers, causing him bleeding and pain in his bladder. ECF 5.
3. Plaintiff's Complaint fails to allege sufficient facts that would entitle him to relief.

¹ Incorrectly named Dr. Oketunji in the amended complaint. ECF 5.

² Incorrectly named MD Sisay Yonas in the amended complaint. ECF 5.

³ Incorrectly named Dr. Bolasi Onabajo in the amended complaint. ECF 5.

⁴ Incorrectly named MD Himny Bishaw in the amended complaint. ECF 5.

⁵ Plaintiff also names Lawrence Scipio, M.D. as a defendant. ECF 5. Dr. Scipio is not a Wexford employee and is not represented by the undersigned counsel.

⁶ Counsel represent the Wexford Defendants for the period prior to January 1, 2019.

Therefore Plaintiff's Complaint should be dismissed.

4. Plaintiff has had four strikes under the Prison Litigation Reform Act and therefore may not proceed in forma pauperis without a determination that he faces imminent danger of serious physical injury. See Cason v. M.D.P.S.C.S., et al., 290 Fed. Appx. 549 (4th Cir., 2008); 28 U.S.C. § 1915(g) (2000). Plaintiff's complaint and supplement allege wheelchair inaccessibility and "filthy" living conditions at DRCF have caused him to be hospitalized for blood clots in his bladder. ECF 1, 5. The Court should take judicial notice that: 1) wheelchair inaccessibility and dirty living conditions do not present imminent danger of serious physical injury; 2) dirty living conditions do not cause blood clots in the bladder; and 3) the medical staff defendants are not responsible for cleaning DRCF facilities or for wheelchair accessibility. Accordingly, Plaintiff should not be allowed to proceed in forma pauperis and the order granting him leave to proceed in forma pauperis (ECF 6) should be reconsidered.

5. Furthermore, based on the undisputed material facts, the Wexford Defendants are entitled to judgment in their favor as a matter of law.

6. The Wexford Defendants adopt and incorporate by reference the entirety of the Motion to Dismiss, or alternatively, for Summary Judgment and the accompanying exhibits filed by the Corizon Defendants (ECF 17).

WHEREFORE, Defendants Asresahegn Getachew, M.D., Ayoku Oketunji, M.D., Yonas Sisay, M.D., Bolaji Onabajo, M.D., and Hiruy Bishaw, M.D. move for the entry of an order dismissing Plaintiff's Complaint or, in the alternative, granting judgment in their favor.

Respectfully Submitted,

MEYERS, RODBELL & ROSENBAUM, P.A.

By: /s/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2020, a copy of the foregoing Motion to Dismiss or, in the alternative, Motion for Summary Judgment was mailed, postage prepaid, or sent by ECF to:

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 /s/
Douglas C. Meister